

**SUMMARY ANALYSIS OF AMENDED BILL**

Author: Dutton Analyst: Scott McFarlane Bill Number: SB 353  
 Related Bills: See Prior Analysis Telephone: 845-6075 Amended Date: May 4, 2009  
 Attorney: Patrick Kusiak Sponsor: Author

**SUBJECT:** Health Savings Account (HSA) Deduction Conformity

☒ DEPARTMENT AMENDMENTS ACCEPTED. Amendments reflect suggestions of previous analysis of bill as introduced February 25, 2009.

☒ AMENDMENTS IMPACT REVENUE. A new revenue estimate is provided.

AMENDMENTS DID NOT RESOLVE THE DEPARTMENTS CONCERNS stated in the previous analysis of bill as introduced/amended \_\_\_\_\_.

FURTHER AMENDMENTS NECESSARY.

DEPARTMENT POSITION CHANGED TO \_\_\_\_\_.

REMAINDER OF PREVIOUS ANALYSIS OF BILL AS INTRODUCED

☒ FEBRUARY 25, 2009, STILL APPLIES.

☒ OTHER – See comments below.

**SUMMARY**

This bill would allow the same deduction on California personal income tax returns for contributions to an HSA as is allowed on the federal individual income tax return for the same taxable year.

**SUMMARY OF AMENDMENTS**

The May 4, 2009 amendments provide that the bill would conform to the 2006 federal law changes to HSAs, and made other technical amendments.

**PURPOSE OF THE BILL**

According to the author's office, the purpose of the bill is to provide uninsured individuals an affordable option for purchasing health insurance.

Board Position:

\_\_\_\_\_ S \_\_\_\_\_ NA \_\_\_\_\_ NP  
 \_\_\_\_\_ SA \_\_\_\_\_ O \_\_\_\_\_ NAR  
 \_\_\_\_\_ N \_\_\_\_\_ OUA \_\_\_\_\_ X PENDING

Legislative Director

Date

Patrice Gau-Johnson  
for Brian Putler

5/8/09

## **EFFECTIVE/OPERATIVE DATE**

As a tax levy, this bill would be effective immediately and specifically operative for taxable years beginning on or after January 1, 2009.

## **POSITION**

Pending.

## **ANALYSIS**

### **THIS BILL**

Starting with taxable year 2009, this bill would conform to the federal HSA provisions, as follows:

1. Allows the same above-the-line deduction for contributions to an HSA by or on behalf of an individual and adopts the rules applicable to the trust itself in order for the trust to be exempt from tax. In addition, the disqualified distribution penalty applicable to HSAs is modified for California purposes to be 2½ percent instead of the federal rate of 10 percent to be consistent with the other California penalty provisions applicable to IRAs. Consistent with general conformity policy in other areas, the federal 6 percent excise tax on excess contributions and the federal estate tax provisions are not being conformed to by this bill.
2. Allows the same exclusion from an employee's gross income for the amount of any contributions to an HSA (including salary reduction contributions made through a cafeteria plan) made on the employee's behalf by their employer.
3. Allows rollovers from MSAs to be made to HSAs, as well as rollovers between HSAs, without penalty.
4. Adopts the same \$50 penalty for failure to make required reports.
5. Allows certain amounts in health FSAs or HRAs to be distributed from the health FSA or HRA and contributed through a direct transfer to an HSA without violating the otherwise applicable requirements for such arrangements.
6. Conforms to repeal of annual deductible limitation on HSA contributions.
7. Determines the Consumer Price Index for a calendar year as of the close of the 12-month period ending on March 31 of the calendar year (rather than August 31 as under prior law) for the purpose of making cost-of-living adjustments for the HSA dollar amounts that are indexed for inflation (i.e., the contribution limits and the HDHP requirements).
8. Allows individuals who become covered under an HDHP in a month other than January to make the full deductible HSA contribution for the year rather than being required to prorate the deduction based on the number of months the individual was enrolled in an HDHP.

9. Conforms to an exception to the comparable contribution requirements to allow employers to make larger HSA contributions for non-highly-compensated employees than for highly-compensated employees. For example, an employer is permitted to make a \$1,000 contribution to the HSA of each non-highly compensated employee for a year without making contributions to the HSA of each highly-compensated employee.
10. Allows a one-time contribution to an HSA of amounts distributed from an IRA. The contribution must be made in a direct trustee-to-trustee transfer. Amounts distributed from an IRA under these rules are not includible in income to the extent the distribution would otherwise be includible in income. In addition, such distributions are not subject to the 2½ percent additional tax on early distributions.

## **ECONOMIC IMPACT**

### Revenue Estimate

Based on the data and assumptions discussed below, this bill would result in the following revenue losses.

Estimated Revenue Impact for SB 353 as Amended Effective for Taxable Years Beginning On or After January 1, 2009 \$ In Millions		
2009-2010	2010-2011	2011-2012
-\$55	-\$55	-\$60

This analysis does not account for changes in employment, personal income, or gross state product that could result from this bill.

### Revenue Discussion

The revenue impact of the bill would be determined by (1) the amount of contributions to health savings accounts deducted on tax returns, (2) the amount of contributions to health savings accounts made on behalf of employees (including salary-reduction contributions), (3) the amount of funds in Archer Medical Savings Accounts (MSAs) that are rolled over to health savings accounts, and (4) the marginal tax rates of taxpayers deducting or excluding contributions.

The May 4, 2009, amendments increase revenue losses over that of the bill as introduced on February 25, 2009, by including the expanded HSA provisions included in the Tax Relief and Health Care Act of 2006 (TRHCA)(Public Law 109-432). For these provisions, the conformity estimate is an additional loss of \$3 million for the 2009 taxable year. This estimate is based on a proration of federal estimates developed for the TRHCA.

The revenue analysis of provisions in the bill as introduced that relate to contributions to HSAs by employees, by employers, and potential rollovers to Archer MSAs, still apply.

For 2009, the estimated loss is \$36.7 million (\$26.5 million for contributions by employees + \$6.6 million for contributions by employers + \$.6 million from potential rollovers from Archer MSAs + \$3 million for expanded provisions included in the TRHCA = \$36.7 million). Tax-year estimates are converted to fiscal-year cash-flow estimates reflected in the table. For example, the 2009-2010 cash-flow estimate includes \$36.7 million for 2009 and \$18.1 million for 2010.

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